

Workers' Compensation Carriers Must Reimburse Injured Workers for the Cost of Medicinal Marijuana in New Jersey

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On January 13, 2020, The New Jersey Appellate Division held that employees can receive reimbursement for medical marijuana prescribed for work related injuries.

The employer unsuccessfully challenged the decision based on these arguments:

1. The Controlled Substance Act makes it illegal to manufacture, possess or distribute marijuana and therefore preempts New Jersey's [Jake Honig Compassionate Use Medical Cannabis Act](#). However, the Appellate Division held that the Controlled Substance Act only preempts a state law that requires performance of an act specifically forbidden by the Controlled Substance Act. Because paying for medicinal marijuana does not require an employer to manufacture, possess or distribute marijuana, such payment is not illegal and therefore is not preempted by this Act.
2. Requiring the employer to pay for medicinal marijuana aids and abets in the commission of a crime. The Appellate Division held that the employer would not be an active participant in the commission of the crime and would merely be complying with the court order. Moreover, the court noted that an individual cannot aid and abet in a crime already completed.
3. Forcing an employer to pay for medicinal marijuana would expose the employer to the threat of federal prosecution. The Appellate Division observed that the federal government has tolerated state medical marijuana laws. Relatedly, there is a specific directive that prohibits use of any Department of Justice funds to prevent states from implementing medicinal marijuana programs.
4. Workers' compensation should be treated the same as a private health insurer under the medicinal marijuana act. However, the Appellate Division held, while the Jake Honig Compassionate Use Medical Cannabis Act specifically states that a private health insurance or a government medical assistance program does not have to reimburse an individual for the cost associated with the medicinal use of cannabis, Title 17 specifically states that "health insurance" excludes Worker's Compensation coverage.
5. Medicinal marijuana cannot be considered reasonable and necessary under the New Jersey Workers' Compensation Act. The Appellate Division found that the use of medicinal marijuana was reasonable and necessary for the treatment of the petitioner's chronic pain.

If the employer decides to appeal this decision, the New Jersey Supreme Court may hear the case.

TAKEAWAY: The legal landscape for medical marijuana use in the workplace is evolving rapidly. For now, prepare to discuss reimbursement for an employee's use of medical marijuana while on workers' compensation with your workers' comp carrier. Keep your human resources policies updated and keep abreast of new developments in employment law related to use of medical marijuana.

Employers should remember that discrimination against an employee who returns to work and continues the prescribed use of medicinal marijuana is prohibited under the [Jake Honig amendment to the NJ Compassionate Use Act](#).

If you are an employer with questions about medicinal cannabis, contact [Tracy Armstrong](#) at 732-352-9858.

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